

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	§	
<i>Plaintiffs</i>	§	
	§	
TEXAS ASSOCIATION OF HISPANIC	§	
COUNTY JUDGES AND COUNTY	§	
COMMISSIONERS, HIDALGO COUNTY	§	
and MARIA LONGORIA	§	
BENEVIDES, ET AL.	§	CIVIL ACTION NO. 2:13-cv-00193
<i>Plaintiff-Intervenors,</i>	§	CONSOLIDATED 2:13-cv-00263
	§	
V.	§	
	§	
RICK PERRY, Governor of Texas; and	§	
JOHN STEEN, Texas Secretary of State;	§	
STEVE McCRAW, in his official capacity	§	
as Director of the Texas Department of	§	
Public Safety ,	§	
<i>Defendants</i>	§	

TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY
COMMISSIONERS, HIDALGO COUNTY ET AL'S RESPONSE TO DEFENDANTS'
MOTION TO DISMISS AMENDED COMPLAINT AND MOTION TO DISMISS
HIDALGO COUNTY FOR FAILURE TO STATE A CLAIM

NOW COME TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS, HIDALGO COUNTY, TEXAS, and file their Response to Defendants' Motion to Dismiss their Amended Complaint and incorporated motion to dismiss Hidalgo County for failure to state a claim, and in support of same would respectfully show:

1. The Texas Association of Hispanic County Judges and County Commissioners and Hidalgo County, et al, adopt the arguments made in Doc. # 90, 91 and 122 as the basis for this Court to deny Defendants' Motion to Dismiss (Doc. # 175).

2. Hidalgo County plainly has standing on the same basis as the other entities. It must expend money and resources to carry out SB 14's mandates. Am. Compl. Doc. #153 ¶ 10.

The County's money and resources are therefore being diverted from other uses of taxpayer money. Second, in its representative capacity, it represents many people who are severely burdened by SB 14, including many already-registered voters who do not have a photo ID listed in SB 14 and whose voter registration—provided by Hidalgo County—is now essentially irrelevant.

3. In addition, though, Hidalgo County has standing as a governmental body whose ability to comply with the law and carry out its statutory obligations is threatened by a state enactment. As alleged in the Amended Complaint, Hidalgo County and its officials are charged with statutory duties that include functions necessary to enable its citizens to exercise their fundamental right to vote. Hidalgo County officials take an oath to perform their duties faithfully in accordance with the Constitution and laws of Texas and the United States of America. Their ability to faithfully carry out that oath is threatened by SB 14, because SB 14 requires Hidalgo County and its officials to act in ways that threaten to deprive citizens of the United States of valuable rights. Thus, Hidalgo County is caught in a dilemma: obey the state law and putatively deprive its citizens of their rights, or violate the state law, with obvious attendant penalties and other consequences.

4. That was precisely the dilemma recognized by the Supreme Court of the United States in *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457 (1982). There too, the public plaintiff was an entity created by, and with obligations under, state law. The public entity alleged it was powerless to carry out its obligations under state law, in compliance with its duty to obey the Constitution and the laws of the state and nation. It also alleged, as Hidalgo County does

here, that it faced potential challenges from its citizens,¹ who claim the entity would violate their rights if it enforced the unlawful act as it was charged to do under state law.

5. Ironically, the specific issue at the heart of the *Seattle* case is the same as here—a state law transferred powers between a locality and the state with the serious consequence, and purpose of, treading on citizens’ rights. In *Seattle*, it was a state law limiting the local school district’s power to combat racial discrimination. Here, it is a state law—SB 14—which takes the power to determine which voters are qualified to vote away from Hidalgo County and its election officials and transfers that power to a single state agency, the Department of Public Safety. That transfer, it is alleged, is the engine of denying the rights of people, including the citizens and voters of Hidalgo County. Likewise, the Supreme Court has recognized that being caught in a dilemma arising from conflicting legal obligations is a classic form of Article III injury that establishes standing:

“The legal duties established by the statutory schemes under challenge are addressed directly to vendors such as appellant. She is obliged either to heed the statutory discrimination, thereby incurring a direct economic injury through the constriction of her buyers’ market, or to disobey the statutory command and suffer . . . sanctions and perhaps loss of license. This Court has repeatedly recognized that such injuries establish the threshold requirements of a case or controversy mandated by Article III.”

Craig v. Boren, 429 U.S. 190, 194-94 (1976).

For the foregoing reasons, Hidalgo County plainly has standing to sue in this case.

Dated: February 27, 2014.

¹ In fact, Hidalgo County was sued in *Saldana et. al. v. Hidalgo County*, No. C-6392-13-I by Hidalgo County voters claiming their right to vote was being violated by SB14. This intervention is the result of the stipulated dismissal of the state action.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this the 27th day of February, 2014, a true and correct copy of the above and foregoing was forwarded through the Electronic Case Filing System, to all counsel of record.

/s/ Preston Henrichson

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